

**FILED**

April 01, 2024

CLERK, U.S. DISTRICT COURT  
WESTERN DISTRICT OF TEXAS

BY: klw  
DEPUTY



# United States Court of Appeals for the Fifth Circuit

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as the mandate on Apr 01, 2024

Attest: Lyle W. Cayce  
Clerk, U.S. Court of Appeals, Fifth Circuit

No. 23-50708  
Summary Calendar

United States Court of Appeals  
Fifth Circuit

**FILED**  
March 8, 2024

Lyle W. Cayce  
Clerk

JAMES E. RUSSELL,

*Plaintiff—Appellant,*

*versus*

AUSTIN COMMUNITY COLLEGE, (*ACCelerator Staff*),

*Defendant—Appellee.*

Appeal from the United States District Court  
for the Western District of Texas  
USDC No. 1:23-CV-788

Before CLEMENT, DUNCAN, and DOUGLAS, *Circuit Judges.*

## J U D G M E N T

This cause was considered on the record on appeal and the briefs on file.

IT IS ORDERED and ADJUDGED that the judgment of the District Court is AFFIRMED.

The judgment or mandate of this court shall issue 7 days after the time to file a petition for rehearing expires, or 7 days after entry of an order denying a timely petition for panel rehearing, petition for rehearing en banc, or motion

for stay of mandate, whichever is later. *See* FED. R. APP. P. 41(b). The court may shorten or extend the time by order. *See* 5TH CIR. R. 41 I.O.P.

# United States Court of Appeals for the Fifth Circuit

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Before CLEMENT, DUNCAN, and DOUGLAS, *Circuit Judges*.

PER CURIAM:\*

James E. Russell filed a pro se civil complaint in the district court, alleging that staff members at Austin Community College (ACC) violated Texas Penal Code § 37.08 by filing a false police report against him, and that they violated his constitutional right to free speech. He also suggested in

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\* This opinion is not designated for publication. *See* 5TH CIR. R. 47.5.

No. 23-50708

conclusory terms that he was a target of harassment and racial profiling. The district court dismissed the complaint for lack of subject matter jurisdiction.

On appeal, Russell contends for the first time that the ACC staff violated his constitutional right to privacy, Texas Penal Code § 42.06, and the Privacy Act of 1974. *See* 5 U.S.C. § 552a. This court, however, will not consider new theories of relief presented for the first time on appeal. *See Leverette v. Louisville Ladder Co.*, 183 F.3d 339, 342 (5th Cir. 1999); *Yohey v. Collins*, 985 F.2d 222, 225 (5th Cir. 1993).

As to the claims he did raise, we review “de novo a district court’s order dismissing a case for lack of subject-matter jurisdiction.” *Khalil v. Hazuda*, 833 F.3d 463, 466 (5th Cir. 2016). Russell failed to allege facts that would support either diversity of citizenship jurisdiction or federal question jurisdiction under 28 U.S.C. §§ 1331, 1332. Further, his brief on appeal does not meaningfully address the district court’s jurisdictional analysis.

Accordingly, the judgment of the district court is AFFIRMED.

***United States Court of Appeals***

FIFTH CIRCUIT  
OFFICE OF THE CLERK

LYLE W. CAYCE  
CLERK

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NEW ORLEANS, LA 70130

April 01, 2024

Mr. Philip Devlin  
Western District of Texas, Austin  
United States District Court  
501 W. 5th Street  
Austin, TX 78701-0000

No. 23-50708      Russell v. Austin Community College  
USDC No. 1:23-CV-788

Dear Mr. Devlin,

Enclosed is a copy of the judgment issued as the mandate and a copy of the court's opinion.

Sincerely,

LYLE W. CAYCE, Clerk

*Lisa E. Ferrara*

By: \_\_\_\_\_  
Lisa E. Ferrara, Deputy Clerk  
504-310-7675

CC:      Mr. James E. Russell